IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Chhote Qureshi & Others Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.373/2005)

2. Chhote Qureshi & Others Vs. State of Rajasthan
(S.B. CRIMINAL JAIL APPEAL NO.571/2005)

S. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 15-2-2005 in Sessions Case No.41/2003 passed by Sh. Ajay Kumar Meena, RHJS, Additional Sessions Judge (Fast Track) No.1, Jaipur City, Jaipur.

Date of Judgment: May 02, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Madhav Mitra, for the appellants
Bhole @ Chandra Prakash & Ram Singh @ Pappu
Mr. Satyapal Poshwal, Amicus Curiae for the appellant Chhote Qureshi.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Chhote Qureshi, Bhole @ Chandra Prakash and Ram Singh @ Pappu, the appellants herein, were put to trial before learned Additional Sessions Judge (Fast Track) No.1, Jaipur City, Jaipur, who vide judgment dated February 15, 2005 convicted and sentenced them under section 394 IPC to undergo rigorous imprisonment for seven years and fine of Rs.500/- in default to further suffer one month rigorous imprisonment.

2. Ill fated bus No.RJ26/P0680 got robbed on January 16, 2003 around 10.15 PM near village Balawala by three passengers who alighted

the bus at village Malpura. The miscreants caused injuries to Mohan Singh Driver and snatched a sum of Rs.300/- from Girdhari Singh, Conductor of the Bus. On receiving information of the incident the police rushed to the spot where a written report was handed over to it by the Conductor of the bus. On that report case under section 394 IPC was registered and investigation commenced. Statements of witnesses got recorded, the appellants were arrested, necessary memos were drawn and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1 Jaipur City Jaipur. Charges under sections 394 and 397/34 IPC were framed. The appellants denied the charges and claimed trial. The prosecution in support of its case examined as many as 22 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions although acquitted the appellants of the charge under section 397/34 IPC, convicted and sentenced them as indicated herein above.

3. Having heard the submissions advanced before me and on weighing the material on record, I find that Girdhari Singh Conductor (Pw.6) and Mohan Singh Driver (Pw.7) are the star witnesses of the prosecution. Girdhari Singh correctly identified appellant Chhote Qureshi in the Identification Parade as well as in the trial court. In his deposition Girdhari Singh stated that when the bus reached near Balawala village, three persons sitting in the Cabin suddenly stood up and over powered the Driver. All the three had revolvers in their hands. One of them caused injury on the head of Driver. He (Girdhari Singh) was forced to get down of the bus and one of them snatched a sum of Rs.1300/- from him. Since two persons had covered

their faces with clothes he could identify only one. He put his signatures on the memo of Identification (Ex.P-5).

4. Mohan Singh Driver (Pw.7) deposed that in the Identification Parade he could identify only appellant Ram Singh @ Pappu. He failed to identify other two appellants. Even he could not identify that person who inflicted injury on his head.

5. It is well settled that the evidence of identity must be thoroughly scrutinised, giving benefit of all doubt to the accused, but if after a thorough scrutiny there appears to be nothing on the record to suspect the testimony of the identification witnesses, the court ought not to feel shy of basing a conviction on such evidence alone, because of the bare possibility that there could be honest though mistaken identification.

6. In the case on hand, I see no reason to discard the testimony of Conductor of the bus viz. Girdhari Singh. Since appellant Chhote Qureshi did not cover his face with cloth and he had snatched money, Girdhari had ample opportunity to see his face and therefore, he had correctly identified Chhote Qureshi in the identification parade as well as in the court. So far as other appellants viz. Ram Singh @ Pappu and Bhole @ Chandra Prakash are concerned, the prosecution could not establish their guilt beyond reasonable doubt. Identification of Ram Singh @ Pappu by Mohan Singh Driver in the identification parade could not be relied upon in view of the testimony of Girdhari Singh who had stated that except Chhote Qureshi, other two miscreants had covered their faces with cloth. In the ultimate analysis I find appellant Chhote Qureshi guilty under section 394 IPC and give benefit of doubt to other two appellants.

7. For these reasons, I dispose of instant appeals in the following terms:-

(i) Appeal of appellants Bhole @ Chandra Prakash and Ram Singh @ Pappu stands allowed and they stand acquitted of the charge under section 394 IPC. These appellants are on bail, they need not surrender and their bail bonds stand discharged.

(ii) I dismiss the appeal of appellant Chhote Qureshi and maintain his conviction and sentence under section 394 IPC.

(Shiv Kumar Sharma)J.

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